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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: APR 21 2011

Office: NEBRASKA SERVICE CENTER

FILE: [redacted] SRC 08 800 37136

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mai Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner asserts that the director denied the petition solely because of the limited number of citations of the petitioner's work and failed to give sufficient weight to the remaining evidence. For the reasons discussed below, the AAO upholds the director's ultimate conclusion that the petitioner has not established his eligibility for the benefit sought.

I. Law

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. Prior Nonimmigrant Visa Approval

At the outset, the AAO acknowledges that U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner. The prior approval, however, does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Thus, the AAO is not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Moreover, if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. For example, the petitioner has asserted that he is a member of associations that require "outstanding achievements of their members, as judged by recognized national and international experts in their disciplines or fields." This language mirrors the regulatory evidentiary requirement for nonimmigrant aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(2)(iii)(A)(*2*). The record, however, does not support the contention that the associations of which the petitioner is a member require such achievements of their members.

III. Eligibility for the Classification Sought

Initially, the petitioner indicated that the beneficiary qualifies as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Doctor of Engineering degree from the University of Massachusetts, Lowell. The petitioner's occupation falls within the regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a

waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

IV. National Interest Waiver

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that USCIS must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" requires future contributions by the alien and does not facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, nanotechnology engineering, and that the proposed benefits of his work, improved manufacturing techniques for nanocomposites, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver is not persuasive. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence he is a member of the [redacted], the [redacted] the [redacted]) and the [redacted] The petitioner is also a student member of the [redacted]

Professional memberships are merely one type of evidence that can be submitted to establish eligibility as an alien of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *NYSDOT*, 22 I&N Dec. at 222. As stated above, the petitioner asserted that the above associations require "outstanding achievements of their members." As explained below, the record does not support this assertion or even suggest that these memberships are indicative of an influence in the field.

[redacted] asserts that prospective members "must be actively engaged in work relating to the research and development of advanced materials or materials processes." The TMS materials reveal that "professional members" are required to hold at least a baccalaureate degree in a relevant field and be actively engaged in the profession. AIST membership is open to producers, suppliers and those employed in academia. An undergraduate degree and employment in the field are not outstanding achievements; nor do they reflect an influence in the field. The petitioner did not submit the membership requirements for AIChE, but the materials the petitioner did submit reveal that it boasts 40,000 members. The petitioner also did not submit the student membership requirements for SPE. Significantly, however, SPE boasts a membership of 20,000. Moreover, the petitioner was only a student member of SPE. None of the above memberships are indicative of the petitioner's influence in the field.

The petitioner submitted evidence that he has reviewed manuscripts submitted for potential publication. Some of the email invitations to perform these reviews request that if the petitioner is unable to complete the review that he recommend "two other possible reviewers with expertise in this area." Dr. [redacted] a professor at the University of Connecticut and an editor of *Polymer Engineering and Science*, asserts that after accepting the petitioner's manuscript for publication, [redacted] invited him to review technical papers.

Peer reviewed scientific journals rely on numerous volunteers to review the manuscripts submitted for publication. Journals seek reviewers with expertise in the relevant area of research such that the reviewers are knowledgeable in the area. None of the evidence suggests that the journals for which the petitioner has reviewed manuscripts rely on a small number of reviewers with demonstrated influence in the field rather than a large pool of reviewers who have published in the field. Thus, the review requests cannot establish the petitioner's eligibility for the benefit sought.

Initially, the petitioner asserted that he had authored 17 "scholarly articles/publications/technical reports appearing in leading journals in the field of nanotechnology and internally with the corporate structure." The petitioner referenced exhibits 3 and 4. Exhibit 3 is his curriculum vitae. This self-serving document cannot establish the authorship claimed. Moreover, the petitioner included on his curriculum vitae his unpublished Master thesis and doctoral dissertation as two of his "publications." The petitioner also included nine internal reports for Samsung in the 1990's and a 2001 Field Lab report.

[redacted] asserts that the petitioner was "the first author" for several "influential reports." [redacted] explains that these reports contained proprietary information and, thus, were not appropriate for publication. [redacted] asserts that the petitioner's previous coworkers subsequently completed work the petitioner initiated and published the final results. [redacted] asserts that this work has garnered citations.

Attestations in the form of an affidavit are only acceptable as evidence where the petitioner documents that primary and secondary evidence is both unavailable or does not exist. 8 C.F.R. § 103.2(b)(2). While the AAO recognizes that the internal reports are proprietary, the petitioner failed to submit the cover pages documenting his authorship. Regardless, authorship of internal reports does not inherently demonstrate an influence in the field. The petitioner has not documented that Samsung's use of the information in the reports has influenced the field, such as trade media coverage of Samsung's innovations based on the petitioner's work.

Exhibit 4 contains five published articles coauthored by the petitioner. The record also contains evidence of the petitioner's conference presentations. While this documentation establishes that the petitioner disseminated his work in the field, at issue is its influence once disseminated. In response to the director's request for additional evidence, the petitioner submitted five articles that cite the petitioner's work. One of these articles had yet to appear online and another was still "under review." The petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12);

Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). As of that date, three articles had cited the petitioner's work.

[redacted], a professor at the [redacted] is the author of one of the citing articles. She also provides a letter in support of the petition stating that she is "adapting the quantification method for the quality of nanocomposites . . . and it helped my research with great impact." Her article, which cites two of the petitioner's articles more than once, is consistent with her claim to have applied the petitioner's method. The fact that one independent researcher has found the petitioner's work useful does not, however, demonstrate that the petitioner has already had some influence on the field as a whole.

The director noted the small number of citations in the record. The director further noted the petitioner's assertion that one of the authors citing his work, [redacted], has himself been cited 2,500 times. On appeal, the petitioner asserts that citations should not serve as the sole basis of eligibility. The petitioner submits evidence that a search of [redacted] name and the word "nanocomposites" produces a list of 12 articles that have been cited no more than 15 times per article.

The AAO acknowledges that some of the petitioner's work involves proprietary issues that are not amenable to publication and concur with the petitioner that a small number of citations does not preclude eligibility. That said, it is still the petitioner's burden to demonstrate his influence in the field. If the citation evidence is not indicative of such an influence, the petitioner must submit alternative evidence documenting that influence.

The remaining evidence consists of reference letters. An evaluation of these letters, must take into account the inherent duties of a materials engineer. The Department of Labor's Occupational Outlook Handbook (OOH) states that engineers in general develop solutions to technical problems and new products. *See* http://www.bls.gov/oco/ocos027.htm#nature (accessed April 14, 2011 and incorporated into the record of proceeding). The OOH provides the following description of the petitioner's occupation:

> ***Materials engineers*** are involved in the development, processing, and testing of the materials used to create a range of products, from computer chips and aircraft wings to golf clubs and snow skis. They work with metals, ceramics, plastics, semiconductors, and composites to create new materials that meet certain mechanical, electrical, and chemical requirements. They also are involved in selecting materials for new applications. Materials engineers have developed the ability to create and then study materials at an atomic level, using advanced processes to replicate the characteristics of those materials and their components with computers. Most materials engineers specialize in a particular material. For example, metallurgical engineers specialize in metals such as steel, and ceramic engineers develop ceramic materials and the processes for making them into useful products such as glassware or fiber-optic communication lines.

Id. Thus, the novelty of the petitioner's work does not inherently distinguish his work from that of other engineers and materials engineers.

As stated above, [redacted] discusses the petitioner's previous work at Samsung, which predates his second Master's degree and his Ph.D. While [redacted] asserts that Samsung promoted the petitioner to an assistant manager, the petitioner lists his position there as "research fellow." [redacted] asserts that the petitioner proposed and conducted "the research for the effect of byproduct gas on the oxidative catalytic process." [redacted] asserts that Samsung kept this research "as a confidential trade secret" but does not suggest that the petitioner is listed as an inventor on a patent or patent application. [redacted] further asserts that the petitioner effectively solved the difficulty of filtering undissolved parts of a solution at high temperature and pressure, which had stopped process development at Samsung. Mr. [redacted] asserts that the petitioner's solution increased productivity and was "highly referred for other process development activities." This sentence is ambiguous and does not demonstrate a wider influence beyond Samsung. While [redacted] asserts that the petitioner's techniques persisted at Samsung even after the petitioner left, the fact that he produced useful results for his employer does not demonstrate his wider influence in the field such that it follows that the petitioner will provide benefits that are national in scope rather than beneficial to a single employer.

[redacted] a professor at the [redacted] confirms that he served as the petitioner's doctoral thesis advisor. [redacted] explains that the petitioner developed "a novel method" that "allows researchers and manufacturers a methodology to determine the effect of process conditions on the degree of mixing in a quantitative fashion." [redacted] notes that the petitioner published his research on this method and confirms that he has received 10 reprint requests. Reprint requests, however, do not demonstrate ultimate reliance on the article.

[redacted] then discusses the petitioner's research "on understanding the effect of proves conditions on the mixing of nanocomposites." [redacted] notes the challenging nature of simulating a twin screw extruder mixing process. [redacted] states that the petitioner "adopted and combined complicated theories for the missing and simplified them for convenient use." [redacted] only speculates, however, that this work "will be extremely useful for researchers in the manufacturing environment and will accelerate the commercialization process." [redacted] further asserts that the body of research on the development of a theoretical understanding of the critical factors in the dispersion of nanofillers "would not be possible without the [petitioner's] expertise and dedication." [redacted] does not, however, explain how independent researchers or manufacturers are using this work.

[redacted] continues (grammar as it appears in the original):

> [The petitioner's] significant achievements resulted in receiving new projects. [redacted] asked a project, funded $100,000/year, to dissolve the mixing problem of its new product developments after learned [the petitioner's] methodology. Last year, [redacted] decided to do a project with [the Center for High-rate

> Nanomanufacturing at the [redacted] with $500,000 fund for 2 years; the project is to develop antimicrobial nano-silver composites for medical device applications and this project should adapt [the petitioner's] research accomplishment entirely. These new projects starting from [the petitioner's] achievements are the strongest evidence for the impacts of [the petitioner's] output on industry and other researchers' projects.

The record, however, lacks letters from officials at [redacted] explaining their interest in the petitioner's work. The only grant application in the record citing the petitioner's research lists Dr. [redacted] as a co-investigator. The fact that the center where the petitioner did his doctoral research will continue to build upon his research does not demonstrate his wider influence in the field.

[redacted] another professor at the University of Massachusetts, Lowell, asserts generally: "Many research projects utilized and adopted [the petitioner's] polymer processing and the microscopic characterization." [redacted] provides no examples and does not specify whether these projects were internal to the University of Massachusetts, Lowell, or at independent institutions. [redacted] discusses the peer review process and concludes that publication alone demonstrates the petitioner's contributions to the field. As stated above, while publication demonstrates dissemination in the field, at issue is the ultimate influence of those publications once disseminated. While [redacted] opines that the petitioner's research will subsequently garner "heavy and dominant" citation, this assertion is highly speculative.

[redacted] also notes the petitioner's academic accomplishments, such as his grade point average. Academic performance, however, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYSDOT*, 22 I&N Dec. at 219, n.6.

[redacted] at South [redacted] explains that the petitioner currently works for [redacted] which uses the facilities at [redacted] xplains the problem that carbon nanotubes do not freely mix with plastics and asserts that the petitioner "has made significant improvements in the quality of mixing of the composites." [redacted] does not explain how this work is already influencing the field.

[redacted] a Senior Scientist at [redacted] provides a highly speculative letter. For example, he predicts that many "researchers in [the petitioner's] area will be using [his] findings in their proposed industrial research and development projects and National Science Foundation funded research projects as well." [redacted] ontinues that the petitioner's "current research involvement at [redacted] will be a critical step toward nanocomposite manufacturing and applications for cheap, useful, but safe consumer products such as all plastic and polymer related produced you could find in [redacted] [redacted] also projects that the defense/aerospace industry "would be directly benefited by [the petitioner's] research and outputs from his activity" and

that his investigation of carbon nanotubes in plastics "will make a new generation of advanced material." These statements appear highly speculative.

[redacted] also discusses the petitioner's optimization techniques and states that "many companies developing nano related products seek expert technical advice from [the petitioner] when they develop new products." [redacted] does not identify any of these "many companies." [redacted] does confirm that the petitioner's "consulting work for elastomeric nanofiber materials was essential in conducting research projects in one of our research programs designed to provide protection to soldiers from chemical and biological attacks." [redacted] does not explain how Foster-Miller applied the petitioner's work. Moreover, such consulting services would not demonstrate the petitioner's influence beyond Massachusetts.

In response to the director's request for additional evidence, the petitioner submitted two new letters. [redacted] a professor at the University of Dayton, asserts that the petitioner's research "has a great deal of impact on other researchers and has influenced and enhanced research and development in the field of manufacturing." [redacted] continues:

> In spite of their relatively short period of public disclosure, [the petitioner's] publications are already cited by famous research groups which follow his research closely. His findings are also significantly utilized by other research groups, as well as many companies, to solve the problems they experience during the manufacture of nanocomposites, such as silver nanocomposites and carbon nanotube composites.

[redacted] does not identify these "other research groups" or the companies that are using the petitioner's work. The record contains five citations, only one of which demonstrates significant reliance on the petitioner's work, and the letters discussed in this decision, only two of which are from company representatives.

Finally, the petitioner submitted a letter from [redacted]. According to his curriculum vitae, [redacted] was recently a professor at the [redacted] and coauthored articles with [redacted] states:

> Many research projects are utilizing [the petitioner's] [redacted] and following his optimization steps with Specific Energy Input for nanofiller compounding process using a twin screw extruder. To tell the truth, the majority of researches in academia are not very useful for industry. But the results from [the petitioner's] research are essential to industrial applications. You will not find many printed articles about [the petitioner's] works since industry doesn't allow publishing its trade secrets. Instead you will be able to find easily many products employment his works in the near future.

[redacted] does not identify any of the "many" research projects utilizing the petitioner's Skewness Index or following his optimization steps. [redacted] does not suggest [redacted] is currently

applying the petitioner's work. Regardless, such application would not demonstrate the petitioner's influence beyond his immediate circle of current and past colleagues.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of ability without providing *specific* examples of how the petitioner's innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[1] While it is clear that [redacted] has found the petitioner's work useful, this one example does not support the assertions in the record of more widespread use of the petitioner's methods and techniques.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Moreover, as discussed above, developing novel materials and processes are inherent to the petitioner's position as a materials engineer. It does not follow that every engineer who develops techniques that add to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job

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[1] *Fedin Bros. Co.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.